IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
S.B. Criminal Appeal No.865/2001

1. Gopal S/o Gyarsilal Kalal
2. Mohanlal S/o Bhanwarlal Dhakad
3. Mst. Geeta W/o Gopal Kalal

(All residents of Chhabadiyon-ka-Nayagaon,
Police Station Dablana, District Bundi)

Versus

State of Rajasthan

Date of Judgment :::: 12th February, 2007

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Shri Kamlakar Sharma, with
Shri Shashank Sharma, Counsel for accused-appellants
Smt. Nirmala Sharma, P.P., for the State
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//Reportable//

By the Court:-

Three accused-persons – Gopal S/o Gyarsilal Kalal, Mohanlal S/o Bhanwarlal Dhakad and Mst. Geeta W/o Gopal Kalal, have preferred this appeal against the judgment and order dated 6.10.2001 passed by the Additional Sessions Judge (Fast Track) No.2, Bundi, in Sessions Case No.112/2001, whereby accused Gopal and Mohanlal have been convicted and sentenced under

Section 376, IPC, to seven years rigorous imprisonment and a fine of Rs.1,000/-, in default of payment of fine to further undergo one month's imprisonment; and accused Geeta has been convicted and sentenced under Section 6 (1) of the Immoral Traffic (Prevention) Act, 1956, to one year's rigorous imprisonment and a fine of Rs.500/-, in default of payment of fine to further undergo one month's imprisonment.

PW-17, Indra W/o Jagdish, filed a criminal complaint dated 1.7.1991, under Sections 498-A, 366 and 376, IPC, in the court of Munisff and Judicial Magistrate, Nainwa, against accused-persons Gopal, Geeta, Mohan and Girraj, alleging therein that marriage of the complainant was solemnized with Jagdish S/o Gyarsilal, Resident of Village Jajawar, about a year ago. Her husband Jagdish became mad about nine months ago. Accused Gopal is the elder brother of her husband Jagdish. Accused Geeta is wife of Gopal and sister-in-law (Bhabhi) of Jagdish, therefore, accused no.1 Gopal is her brother-in-law (Jeth) and accused No.2 Geeta is her sister-in-law (Jethani). In the complaint, it was further alleged by the complainant that after her marriage when her mother-in-law Nurka came at her maternal house to bring her, she went with her to Village Jajawar and lived there

for about one month, but her husband became mad, and thus marital relations could not take place in between them, and, therefore, she came back to her maternal village Sanwatgarh with her father. It was further alleged by the complainant that about three months ago Geeta, her sister-in-law (Jethani), came at her maternal village Sanwatgarh and requested her parents to send Indra with her. The parents of Indra send her with Geeta. Thereafter the accused-persons started harassing the complainant. Accused Geeta used to tell her that Jagdish, husband of Indra, is impotent, therefore, she should do as per Geeta's wish. It was further alleged that her brother-in-law (Jeth) accused Gopal committed rape with her. It was also alleged that about a month ago accused Geeta took Rs.50/- each from accused Mohan and Girraj and sent both of them to have sexual intercourse with the complainant. It was further alleged in the complaint that about eight days ago Geeta told her that she should marry with her brother Bhairon. About four days ago Kamla, the mother of the complainant, came to meet her. Accused Gopal and Geeta both told her mother to marry the complainant with Bhairon, the brother of Geeta and brother-in-law (Sala) of accused Gopal. However, her mother brought her to village Sanwatgarh, otherwise both the accused-persons would have sold her to

Bhairon. Accused Gopal and Geeta, both, wanted to sell her and the reason behind it is that her husband Jagdish has become mad and, in case, she goes elsewhere then they will capture her entire property. She was detained for about three months and she was not allowed to go anywhere, therefore, it was prayed in the complaint that the above action of the accused-persons is punishable under Sections 376, 366 and 498-A, IPC, and they may be punished accordingly.

The learned Judicial Magistrate, vide its order dated 1st of July, 1991, forwarded the said complaint for investigation under Section 156 (3) of the Code of Criminal Procedure. The Police Station, Dablana, registered F.I.R. No.118/91 against all the four accused-persons for the offence under Sections 498-A and 376, IPC, and started investigation. After completion of investigation, the police filed a challan against accused-appellants under Section 498-A, 366, 376 and 120-B, IPC, and Section 6 (1) of the Immoral Traffic (Prevention) Act, 1956.

So far as another accused Girraj is concerned, at that time his age was found less than 16 years, therefore, a challan was filed against him in Juvenile Court.

The learned trial court framed charge against accused Gopal under Sections 498-A and 376, IPC; against accused Mohan under Sections 376, IPC; and against accused Smt. Geeta under Sections 498-A, 120-B, IPC, and under Section 6(1) of the Immoral Traffic (Prevention) Act, 1956. The accused persons denied the charge and claimed to be tried.

The learned trial court, after conclusion of the trial, acquitted accused Gopal from the charge under Section 498-A, IPC, accused Geeta from the charge under Sections 498-A and 120-B, IPC, but convicted and sentenced both of them as well as accused Mohan Lal, as mentioned above.

The learned counsel for accused-appellant Shri Kamlakar Sharma, contended that the offence under Section 376, IPC, is not made out against any of the accused-persons for the reason that the conviction is based on sole testimony of PW-17 Indra, whose statement appears to be unnatural. He read out the statement of PW-17 Indra, wherein she stated that Geeta allowed her husband Gopal to have sexual intercourse with Indra. He contended that no lady will allow her husband to have sexual intercourse with another lady, therefore, her statement does not appear

to be trustworthy and in case her statement is discarded then there is no other evidence to connect the accused persons with the crime. He also contended that the statement of Indra is not corroborated with any other evidence including the medical evidence. He also contended that so far as Section 6 of the Immoral Traffic (Prevention) Act, 1956 is concerned, the same is also not made out as PW-17 Indra was residing in her residential house along-with her mother-in-law Nurka and other family members including accused Gopal and Geeta and the said residential house cannot be treated as brothel and it is not correct that Indra was detained in her in-law's house. He, therefore, contended that the learned trial court committed serious illegality in convicting and sentencing the accused-persons.

Alternatively, the learned counsel for the appellants contended that accused Gopal and Mohan both have remained in actual custody for about five-and-half-year and in case the period of remission is included in it then almost they have completed seven years of imprisonment and either they have been released or they are likely to be released from jail, therefore, in case, this court does not agree with his contentions then the sentence of the accused-

appellants may be reduced to a period of sentence of imprisonment already undergone by them.

So far as accused Geeta is concerned, the learned counsel for the appellants contended that she also remained in jail for about sixteen days and, she being a lady, her sentence of imprisonment of one year, awarded by the learned trial court, may also be reduced to a period of imprisonment already undergone by her.

The learned counsel appearing on behalf of the State, Smt. Nirmala Sharma, contended that there is overwhelming evidence of the prosecution to connect the accused-persons with the crime. She contended that the statement of PW-17 Indra is sufficient to convict the accused-persons. She further contended that the judgment of the learned trial court is absolutely legal and justified and no interference is called for therein by this Court.

I have heard the learned counsel for both the parties and minutely scanned the impugned judgment as well as the record of the trial court.

PW-17 Indra Bai W/o Jagdish is the prosecutrix

in the present case. Accused Gopal is the brother of Jagdish, the husband of prosecutrix. Accused Geeta is wife of accused Gopal. DW-2 Nurka is mother-in-law of prosecutrix Indra Bai and mother of accused Gopal and also of Jagdish. Indra Bai (PW-17) married with Jagdish and after her marriage Smt. Nurka (her mother-in-law, came at her maternal village Sanwatgarh and brought Indra Bai at her in-law's village Jajawar, and she lived there for about a month. Her husband Jagdish had become mad, therefore, no marital relations took place in between Indra and Jagdish. Indra returned back to her maternal village, but, according to the complaint, when accused Geeta persuaded her parents to send Indra with her, she came back at Jajawar. According to the allegation in the complaint as well as the statement of PW-17, accused Gopal and Geeta both wanted that Indira should marry with Bhairon (brother of Geeta). The said fact is also corroborated with the statement of PW-11 Mangilal and PW-12 Kamla Bai, who are the father and mother of Indra. PW-11 Mangilal and PW-12 Kamla, both, have stated before the Court, in their statements, that when they went to meet her daughter then accused Gopal and Geeta both requested them to get Indra married with Bhairon, the brother of accused Geeta, as Jagdish, the husband of Indra, had become mad after his marriage. Exhibit P-17

is the complaint, which was filed in the court directly without any first information report at Police Station. There is no reference in the complaint filed in the court that the complainant even approached the police station to register FIR in the matter. The complaint was filed in the court on 1.7.1991 and the concerned clerk, while making the report on it, also reported that no FIR relating to the complaint has been received in the Court. Exhibit P-17 also shows that there is no reference of having registered FIR at the police station in respect of same allegations which have been alleged in the complaint, otherwise the report under Section 210, Cr.P.C., would have been called by the court instead of sending the complaint for investigation under Section 156 (3), Cr.P.C. The record shows that case was registered at the police station but copy of FIR has not been exhibited in the case. PW-17 Indra Bai was medically examined on 8.7.1991 and her medical-report is Exhibit P-2 wherein it was opined that no definite opinion can be given regarding rape. Exhibit P-2 has been proved by Dr. O.P. Verma (PW-2), who stated that he cannot say definitely that rape was committed with Indra.

So far as other prosecution evidence is

concerned, PW-1 is witness to Exhibit P-1, PW-3 Dr. Narain Dixit, who is the radiologist, has proved the report Exhibit P-4 in respect of age of accused Girraj. PW-4 Ramnarain and PW-5 Ramchandra were declared hostile. PW-6 Bhanwarlal is the witness to Exhibit P-7 and Exhibit P-8, the arrest-memos of accused Mohanlal and Girraj. PW-7 Hazarilal was declared hostile. PW-8 Moolchand is the witness to Exhibit P-9, the site-plan. PW-9 Dr. Bhanwarsingh Shaktawat, who was the medical officer, examined the accused Girraj. PW-10 Bhanwarlal S/o Moolchand was declared hostile. PW-13 Ramdeo and PW-14 Kishore Bai, both, were declared hostile by the prosecution. PW-15 Radheyshyam is the witness to Exhibit P-9, the site-plan. PW-16 Praveen Sharma was the Circle Officer, Police Station Nainwa, who investigated the case.

The above narration of prosecution evidence reveals that the entire prosecution case is based on the statement of sole testimony of PW-17 Indra Bai and her statement is not corroborated with any other prosecution evidence including the medical evidence. There is no dispute in the proposition of law that the conviction under Section 376, IPC, can be maintained on the sole testimony of the prosecutrix provided her statement is trustworthy and inspires confidence of

the court, otherwise her statement is to be scrutinized minutely.

PW-17 Indra Bai, in the complaint – Exhibit P-17 itself, has mentioned that accused Gopal and Geeta wanted her to marry with Bhairon (the brother-in-law of accused Gopal and brother of accused Geeta). DW-2 Nurka, the mother-in-law of Indra Bai, has stated that allegations levelled by Indra are totally false. Her son Jagdish had become mad, therefore, Indra went from their village Jajawar and contacted 'Nata' marriage at Hindoli with Gajanand. PW-17 Indra Bai, in her statement before the trial court, has given name of her husband as Jagdish and at present Wife of Gajanand, Resident of Hindoli. The allegation of forcible sexual intercourse is not corroborated with any other prosecution evidence including the medical evidence. It is correct that in such matters, the corroboration with medical evidence is always not necessary provided statement of prosecutrix inspires confidence of the court, which is to be scanned minutely.

From the contents of complaint Exhibit P-17 as well as statements of PW-17 Indra Bai, PW-11 Mangilal, PW-12 Kamla Bai (parents of Indra Bai) and statement of DW-2 Nurka (mother-in-law of Indra Bai), it appears

that Indra Bai married with Jagdish, who, after his marriage, became mad and accused Gopal and Geeta wanted that Indra should marry with Bhairon (the brother of accused Geeta). PW-17 Indra Bai herself has stated that her mother-in-law Nurka (DW-2) came to bring her and she accompanied with Nurka for her in-law's village Jajawar and lived there for about one month. She had not made any complaint for this period of whatsoever nature. However, she further alleged that thereafter her sister-in-law (Jethani) Geeta came to bring her and their parents sent her with Geeta and after that she was harassed by accused Geeta and Gopal. She also alleged that accused Geeta took Rs.50/- each from other accused-persons, namely, Mohan and Girraj, and allowed them to have sexual intercourse with her. PW-17 has also alleged that accused Gopal also committed forcible sexual intercourse with her in connivance of accused Geeta. There may be some exceptions, but ordinarily no lady shall allow her husband to go with another lady for sexual intercourse more-so when in the present case it is alleged that Geeta herself sent Gopal to have sexual intercourse with Indra. The prosecutrix does not dispute that she was residing in the house belonging to her in-laws where her mother-in-law was also residing. She never made any complaint to her

mother-in-law at any stage. She did not make any hue and cry. She has admitted that she used to go for natural calls outside her house i.e. in Jangal and she did not narrate this story to anyone of the village also. As already stated above, no FIR was lodged by her immediately. Even her parents did not make any complaint to Nurka, her mother-in-law, about the act alleged to have been committed by accused Gopal and Geeta. PW-11 Mangilal and PW-12 Kamla, the parents of Indra Bai, did not lodge FIR also. In these circumstances, it appears that accused Gopal and Geeta were interested in marrying Indra with Bhairon (the brother of Geeta) as Jagdish had become mad, but it is not proved beyond all reasonable doubts that accused Gopal committed any forcible sexual intercourse with Indra, who was none else but the wife of his younger brother residing in the same house where his mother DW-2 Nurka was residing. It is also unnatural that when accused Geeta wanted to marry Indra with her brother Bhairon then how she herself would have allowed the strangers like Mohan and Girraj to have sexual intercourse with Indra. The prosecution has not produced any independent witness of the in-law's village of Indra Bai to corroborate her statement to prove the charge. If the strangers would have come to the residential house of Nurka, Gopal and Geeta, then it

would have been in the knowledge of neighbours. The said allegation has been denied strongly by DW-2 Nurka, the mother-in-law of Indra Bai.

Apart from the above, the accused examined DW-1 Prabhu S/o Rughnath Meena, the neighbour of accused Gopal, who stated before the Court that he knows Indra and her husband Jagdish and also accused Gopal. He stated that Indra was not willing to live with Jagdish as he became mad. He specifically stated that it is absolutely false that Gopal or his wife Geeta wanted Indra to be prostituted. He stated that if it would have happened then certainly it would have come in his knowledge as his house is situated in front of the house of the accused.

The above facts reveal that prosecutrix Indra took three stands in her complaint (Exhibit P-17) as well as in her statement before the trial court, one is that Geeta wanted her to become prostitute, second is that Gopal and Geeta wanted her to marry with Bhairon, and third one is that there was property dispute and Gopal wanted to grab the entire property of her in-laws as her husband Jagdish had become insane and it was not possible till she could have left her in-law's house by contacting another marriage with Bhairon. The statement of PW-17 Indra Bai is not only self-contradictory so as to disbelieve, but her

statement is not corroborated with any other independent witness and in these circumstances it is unsafe to base the conviction of the accused on her sole testimony, which cannot be said to be trustworthy in the facts and circumstances of the present case.

In view of the above discussion, I find that the sole testimony of Indra Bai (PW-17) does not inspire confidence of the court and in the facts and circumstances of the present case it is untrustworthy and the conviction cannot be based on her statement alone. The prosecution has failed to prove the charge against accused-persons beyond reasonable doubt and they are entitled to get the benefit thereof.

Consequently, the appeal of the appellants is allowed. Their conviction and sentence passed by the trial court is set aside. Appellants Mohan and Gopal are in judicial custody and they may be released forthwith, if their custody is not required in any other case.

Appellant Geeta is on bail and her bail-bonds are discharged.

(Narendra Kumar Jain) J.

//Jaiman//